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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF TULARE, VISALIA DIVISION

16
17 In re SEARCH WARRANT No. 013487
EXECUTED AUGUST 22, 2017 AT
18 CHASE BANK

19 YORAI BENZEEVI,

20 Moving Party,

21 v.

22 SUPERIOR COURT OF THE COUNTY
OF TULARE

23 Respondent,

24 TULARE COUNTY DISTRICT
25 ATTORNEY'S OFFICE,

26 Real Party in Interest.

Case No.

**SURREPLY IN SUPPORT OF MOTION
TO SEAL AND FOR A PROTECTIVE
ORDER OF PORTIONS OF DR. YORAI
BENZEEVI'S MEMORANDUM IN
SUPPORT OF HIS MOTION FOR
RETURN OF SEIZED PROPERTY AND
RELATED EVIDENTIARY HEARING
AND SUPPORTING DECLARATION OF
DUROSS O'BRYAN**

Date: November 9, 2018
Time: 2:00 p.m.
Dept.: 13
Judge: Hon. John P. Bianco

1 This Court should grant Dr. Benzeevi's Motion to Seal and for a Protective Order ("the
2 Motion"). First, the District Attorney's ("the State") opposition to sealing arises from the premise
3 that Dr. Benzeevi's financial information should become public because he embezzled funds—
4 and in so doing the State misrepresents critical facts about Dr. Benzeevi's District-approved
5 authority to perform those very acts that the State now characterizes as criminal. Second, the
6 proposed redactions are narrowly tailored and, in any event, the State fails to identify any public
7 interest justifying the dissemination of an unindicted person's private financial information.
8 Third, Assistant District Attorney Holly aims to use (and has already used) the publication of Dr.
9 Benzeevi's confidential financial information to humiliate and vilify Dr. Benzeevi—
10 notwithstanding Dr. Benzeevi's pending sealing motion before this Court.

11 The State opposes Dr. Yorai Benzeevi's Motion based on the incorrect notion that Dr.
12 Benzeevi embezzled funds from the Tulare Local Healthcare District ("the District") after
13 "direct[ing] the money into an account entirely controlled by himself." State Surreply re Sealing
14 at 2. But far from embezzlement, this use of funds is precisely what the State authorized. The
15 State ignores the plain language of the Management Services Agreement ("MSA"), which
16 governed the relationship between HealthCare Conglomerate Associates, LLC ("HCCA") and the
17 District. That language directly authorized HCCA to "make payment from the Master Account or
18 other accounts of the District . . . *to itself and its Affiliates of any amounts due to it . . .*
19 *including, without limitation, the Management Fee, and the reimbursement of expenses and*
20 *advances."* Dowd Decl., Ex. 2 § 4(g)(v) (emphasis added). So the MSA gave HCCA and Dr.
21 Benzeevi explicit authority to move monies from the District bank account to HCCA. And the
22 State likewise ignores that Resolution 852, which was ratified by the Board, similarly granted Dr.
23 Benzeevi the authority "to take any further actions and to execute, in the name of and on behalf of
24 the District, *any* instruments and documents required by the lender to obtain such loan . . . it
25 being the intention of the Board that [Dr. Benzeevi] *shall have absolute, full and complete power*
26 *and authority to execute and deliver to the lender any and all documents and instruments*
27 *required to obtain and consummate such loan."* *Id.*, Ex. 6 at 1 (emphasis added). These two
28 documents, both of which were approved by the District, authorized Dr. Benzeevi to 1) negotiate

1 and execute the Celtic loan, and 2) transfer Celtic loan funds from the District's Tulare Asset
2 Management Account to HCCA to satisfy outstanding loans to HCCA. Thus, as outlined
3 extensively in its Motion for Return of Seized Property, Dr. Benzeevi acted with full approval of
4 the District and neither stole nor embezzled District funds. His sealing motion cannot be denied
5 on that ground.

6 In any event, the redactions Dr. Benzeevi proposes are narrowly tailored and seek to
7 redact only that information related to Dr. Benzeevi's unrelated personal financial information.
8 *See Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 506 (2014)
9 (approving of a willingness to redact and criticizing "an-all-or-nothing approach" to sealing entire
10 documents (internal quotation marks omitted)). For example, the beginning balance of Dr.
11 Benzeevi's bank account is not a matter of public concern, nor is the movement of funds within
12 Dr. Benzeevi's personal family account or the deposits that occurred after the deposit that
13 included monies from the Celtic loan. And expert J. Duross O'Bryan's analysis of that personal
14 financial information is likewise not appropriate for public consumption. Dr. Benzeevi's
15 constitutional right to privacy extends to his confidential financial information—including his
16 bank statements and other account information. *See Fortunato v. Super. Ct.*, 114 Cal. App. 4th
17 475, 481 (2003). Notwithstanding its protests to the contrary, the State has identified no public
18 interest in the operations of Dr. Benzeevi's personal financial affairs, particularly given that the
19 State has not to date charged Dr. Benzeevi with any crime. Moreover, the vast majority of Dr.
20 Benzeevi's brief in support Motion for Return of Seized Property is available to the public; only
21 information related to account numbers, deposits, and balances has been redacted. Thus, the
22 State's argument that these limited redactions somehow harm the public's access to court records
23 is unreasonable and unsupported.

24 The State also cannot use information obtained through a search warrant to embarrass and
25 humiliate the unindicted—especially where, as here, that information is subject to a pending
26 motion to seal. *Cf. Survivor v. Our Kids of Miami-Dade/Monroe, Inc.*, No. 11-CIV-24611-
27 SEITZ, 2016 WL 950952, at *1 (S.D. Fla. Mar. 7, 2016) (holding a party in contempt for
28 disclosing information covered by a sealing order). But Assistant District Attorney Holly made

1 his opposition to Dr. Benzeevi's Motion for Return of Seized Property—which includes
2 information Dr. Benzeevi specifically sought to seal, such as prior account balances, transfer
3 amounts, and the amount seized pursuant to the Chase Warrant¹—available on Facebook and on a
4 publicly-available Dropbox account.² Declaration of Ajay Krishnan in support of Dr. Yorai
5 Benzeevi's Surreply In Support Of His Motion to Seal and For a Protective Order, Ex. 1 [Senovia
6 Gutierrez's Facebook page], Ex. 2 [Citizens for Hospital Accountability Facebook page]. This
7 behavior ignores the serious reputational consequences for the unindicted and uncharged.
8 *Survivor*, 2016 WL 950952, at *1 (noting that the publication of confidential, sealable
9 information "is a bell that cannot be un-rung"); cf. *Douglas Oil Co. of Cal. v. Petrol Stops Nw.*,
10 441 U.S. 211, 219 n. 10 (1979) (explaining that a significant reason behind the secrecy of grand
11 jury proceedings is "to protect [the] innocent accused who is exonerated" (internal quotation
12 marks and citation omitted)). Under these circumstances, the State should be admonished for its
13 disregard of Dr. Benzeevi's pending sealing motion and Dr. Benzeevi's reputational, financial,
14 and personal privacy.

15 Dr. Benzeevi's Motion should be granted.

16 Dated: October 26, 2018

17 KEKER, VAN NEST & PETERS LLP

18 By: 
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20 Attorneys for Dr. Yorai Benzeevi and
21 HealthCare Conglomerate Associates, LLC
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25 ¹ See, e.g., State's Opposition to Benzeevi Motion for Return of Seized Property at 13, 14.

26 ² That is, as far as Dr. Benzeevi is aware, only three groups had access to Mr. Holly's brief: Dr.
27 Benzeevi and his lawyers, this Court, and the Tulare District Attorney's Office. Dr. Benzeevi and
28 his counsel did not share the brief, and Dr. Benzeevi likewise believes no one in this Court shared
the brief. So by a process of elimination, Dr. Benzeevi is left only with the conclusion that Mr.
Holly, or someone in his office, gave this brief to Dr. Benzeevi's political opponents.